IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No.3

Criminal Misc. Application No. 270 of 2003

Umesh Chandra Goswami and two others …… Petitioners.

Vs.

State of Uttaranchal and others ……..….Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri J.P.Joshi learned counsel for the petitioners and Sri R.A.Sambhal learned A.G.A. for the State and perused the record.

2- This is petition under section 482 of the Criminal Procedure Code (for short 'Code') for quashing of the order dated 28-2-2003 passed by the learned Magistrate taking cognizance of the offence against the petitioners and order dated 27-8-2003 passed by the learned Sessions Judge in the revision preferred against the said order.

3- The gist of the argument of the learned counsel for the petitioner is that the summoning order passed by the learned Magistrate does not disclose that he had applied his mind to the facts and evidence in the case and passed the summoning order mechanically without looking into the evidence which does not prima facie disclose the commission of the offence.

4- The summoning order was passed on the charge sheet on 28-2-2003 and under the revisional jurisdiction the learned Sessions Judge has assessed all the relevant aspects of the matter and did not accept the contention of the petitioners as raised there similar to the submission made in this petition.

5- The learned counsel for the petitioners admitted that the complainant had supported the allegations of the F.I.R. in his statement under section 161 of the 'Code', although other neighbours who have been shown as the witnesses, have not corroborated his statement. Even if the complainant had supported the allegations of the F.I.R. that was sufficient to prima facie show that the offence was committed by the persons nominated in the F.I.R. It is not a case in which there was no evidence to take cognizance against the petitioners and the plea taken by the petitioners being devoid of substance the petition is misconceived and liable to be dismissed.

6- The petition is dismissed in limine.

(Irshad Hussain, J.)

Dt: 7-11-2003

ISB